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MEMORANDUM

TO: Committee on Legal Services

FROM: Jerry Payne, Office of Legislative Legal Services

DATE: December 10, 2019

SUBJECT: Rules of the Air Quality Control Commission, Department of Public Health and Environment, concerning Colorado low emission automobile regulation, 5 CCR 1001-24 (LLS Docket No. 190044; SOS Tracking No. 2018-00417).¹

Summary of Problem Identified and Recommendation

Section 42-4-403 (6)(a), C.R.S., prohibits the Air Quality Control Commission (commission) from adopting diesel emission standards that would result in emission requirements that would be more stringent than the emission standards adopted by the United States Environmental Protection Agency (EPA). But several rules of the commission's Regulation Number 20 adopt emission standards that apply to diesel vehicles and that are more stringent than those adopted by the EPA. **Because these rules of Regulation Number 20 conflict with the statute, we recommend that Rules I.E.5., I.E.9., I.E.11., II.A., II.D., III.A.1., III.A.2., III.B., IV., V., VI.C., VII., VIII., IX.B.1., IX.B.2, XI., and XII. of Regulation Number 20 of the commission's rules concerning Colorado low emission automobile regulation not be extended.**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2020, unless the General Assembly acts by bill to postpone such expiration.

Analysis

1. The commission adopted California's emission standards in Regulation Number 20 under an exception to federal preemption.

1.1. Federal law generally preempts states from regulating emission standards of new motor vehicles.

Federal law preempts states or political subdivisions from adopting or enforcing emission standards of new motor vehicles and their engines that are more stringent than federal law:

§ 7543. State standards. (a) Prohibition. No State or any political subdivision thereof **shall adopt** or attempt to enforce any **standard relating to the control of emissions from new motor vehicles** or new motor vehicle engines subject to this part. ...² **(Emphases added)**

1.2. But states are authorized to adopt California's emission standards.

But if certain conditions are met, section 7543 (b)(1) allows states that have adopted more stringent emission standards for new motor vehicles before March 30, 1966, to obtain a waiver of this prohibition:

§ 7543. State standards. (b) Waiver. (1) The Administrator shall, after notice and opportunity for public hearing, **waive** application of **this section to any State which has adopted standards** (other than crankcase emission standards) **for the control of emissions from new motor vehicles** or new motor vehicle engines **prior to March 30, 1966**³ **(Emphases added)**

Under this provision, California has adopted and implemented state emission standards governing new motor vehicles and their engines that are more stringent than the federal standards. Another provision of federal law⁴ authorizes any state to adopt these emission standards for new motor vehicles and their engines:

§ 7507. New motor vehicle emission standards in nonattainment areas. Notwithstanding section 209(a) [42 USCS § 7543(a)], **any State** which has plan provisions approved under this part [42 USCS §§ 7501 et seq.] **may**

² 42 U.S.C. § 7543 (a). For the full provision, see **Addendum A**.

³ 42 U.S.C. § 7543 (b)(1). For the full provision, see **Addendum A**.

⁴ 42 U.S.C. § 7507.

adopt and enforce for any model year **standards relating to control of emissions** from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209(a) [42 USCS § 7543(a)] respecting such vehicles if—

(1) such standards are **identical to the California standards** for which a waiver has been granted for such model year ...⁵ (**Emphases added**)

Under this federal exception to preemption, the commission adopted the California standards in Regulation Number 20.

2. State statute prohibits Colorado from adopting more stringent diesel-vehicle emission standards or inspection and maintenance programs.

2.1. Several rules of Regulation Number 20 conflict with state statute by adopting the California emission rules.

In article 7 of title 25, C.R.S., the commission is given broad authority to regulate emissions.⁶ But although the commission has broad authority over air quality, section 42-4-403 (6)(a), C.R.S., prohibits the commission from adopting diesel-vehicle emission standards that are more stringent than the standards adopted by the EPA:

42-4-403. Powers and duties of the commission. (6) (a) Notwithstanding any other provisions to the contrary, the commission shall not have authority to adopt emission standards or implement an inspection and maintenance program that would result in emission requirements or an in-use testing or compliance demonstration that would be more stringent than the emission standards and test procedures adopted by the United States environmental protection agency for the corresponding model year and class of vehicle or engine.⁷ (**Emphases added**)

This provision expressly denies the commission the authority to adopt diesel emission standards that are more stringent than the federal standards. The purpose of California having its own emission standards is to be more stringent than the standards adopted by the EPA. Therefore, the rules facially conflict with section 42-4-403 (6)(a), C.R.S.

⁵ *Id.* For this provision, see **Addendum A**.

⁶ This authority is cited in **Addendum B**.

⁷ § 42-4-403 (6)(a), C.R.S.

To the extent that one might argue that section 42-4-403 (6)(a), C.R.S., does not apply to Regulation Number 20, the plain meaning of the statute demonstrates otherwise.

2.2. The state statutory prohibition applies to diesel vehicles.

Section 42-4-403 (6)(a), C.R.S., is contained in part 4 of article 4 of title 42, C.R.S., which applies to diesel-fuel vehicles. It does not apply to gas engines, electric engines, or other non-diesel engines. The provisions of Regulation Number 20 that conflict with this section, however, do not distinguish between diesel and gas engines; they apply to both. For example, Rule II.A. of Regulation Number 20 establishes emission standards based on California emission standards:

II.A. Low Emissions Vehicle Sales - It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, lease, acquire or receive a 2022 or subsequent model year new Passenger Car, or a Light Duty Truck, Medium Duty Passenger Vehicle, or a Medium Duty Vehicle; new light- or medium-duty motor vehicle engine or motor vehicle with a New Motor Vehicle engine in the State of Colorado which is not certified to California Code of Regulations

This provision applies to new passenger cars, light duty trucks, medium duty passenger vehicles, medium duty vehicles, etc., regardless of whether they are diesel or gas engines. Therefore, the rules that incorporate or refer to the California emission standards conflict with the statute because they apply to diesel vehicles and their engines.⁸

3. The plain meaning of the statute's terms apply to both emission standards and enforcement mechanisms.

Absent an absurdity or contradiction, the Colorado Supreme Court has held that statutes should be interpreted based on the plain meaning rule. The following explanation of this rule is set forth in *Colorado State Civil Service Employees Association v. Love*:

Whether we are considering an agreement between parties, a statute or a constitution, with a view to its interpretation, the thing which we are to seek is *the thought which it expresses*. To ascertain this the first resort in all cases is to the

⁸ These are Rules I.E.5., I.E.9., I.E.11., II.A., II.D., III.A.1., III.A.2., III.B., IV., V., VI.C., VII., VIII., IX.B.1., IX.B.2, XI., and XII. of Regulation Number 20. All of Regulation Number 20 is reproduced in **Addendum C**.

natural signification of the words employed in the order of grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning which involves no absurdity and no contradiction between different parts of the same writing, then that meaning, apparent on the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed. *In such a case there is no room for construction. ... [N]either courts nor legislatures have a right to add to or take away from that meaning.*⁹ (*Italics emphasis in original and bold emphasis added*)

In employing the plain meaning rule, the words of a statute should be given their natural significance. As the court in *Robinson v. Legro* pointed out, an aspect of the plain meaning rule is to avoid "constructions that would render meaningless a part of the statute."¹⁰ Furthermore, section 2-4-201 (1)(b), C.R.S., which concerns statutory interpretation, provides: "In enacting a statute, it is presumed that ... [t]he entire statute is intended to be effective." Based both on caselaw and state statute, the construction of a statute that ignores a significant phrase in a statute should be avoided.

Federal law does not preempt a state's authority to impose maintenance and inspection programs.¹¹ One way to construe section 42-4-403 (6)(a), C.R.S., is to consider it to apply merely to inspection and maintenance programs. The construction would be based upon part 4 of article 4 of title 42, C.R.S., generally addressing the inspection and maintenance of diesel vehicles. Although this prohibition is within part 4, the plain meaning of section 42-4-403 (6)(a), C.R.S., expressly applies to both adopting emission standards and enforcing inspection and maintenance programs. To construe section 42-4-403 (6)(a), C.R.S., as applying only to the inspection and maintenance of diesel vehicles requires that a significant phrase of the statute be ignored.

Despite the placement of section 42-4-403 (6)(a), C.R.S., within a part of the statute that creates an inspection and maintenance program, it removes commission authority

⁹ *Colorado State Civil Service Employees Association v. Love*, 448 P.2d 624, 627 (Colo. 1968) (Quoting Cooley's Constitutional Limitations, 69, 70).

¹⁰ *Robinson v. Legro*, 2014 CO 40, ¶ 14 ("Our construction of the ... exemption is more consistent with the plain language of the statute because it does not require adding or deleting words or punctuation." *Id.* at ¶ 17).

¹¹ See 42 U.S.C. § 7543 (d): "Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles."

to "adopt emission standards." The phrase "adopt emission standards" is joined with the phrase "implement an inspection and maintenance program" by the disjunctive word "or." The plain meaning of the word "or" is to identify two separate actions, so the statute by its terms denies the commission authority to do either action.

Furthermore, the section 42-4-403 (6)(a), C.R.S., begins with the phrase "Notwithstanding any other provisions to the contrary" The statute does not limit itself to part 4 of article 4 of title 42, C.R.S. The statute does not begin with "Notwithstanding any other provisions of this **part 4** to the contrary" The plain meaning of this introductory phrase is that this statute applies more broadly than merely to part 4. And the plain meaning of this introductory phrase is also that the specific prohibition in section 42-4-403 (6)(a), C.R.S., takes priority over the commission's general rule making authority in article 7 of tile 25, C.R.S. To construe the statute so that section 42-4-403 (6)(a), C.R.S., is limited merely to the mentioned part 4, it is also necessary to ignore this significant phrase.

The commission has broad rule-making authority, both generally and specifically regarding diesel emissions and inspection programs. But the commission's broad authority to adopt emissions rules must be read in the light of the specific prohibition contained in section 42-4-403 (6)(a), C.R.S. Therefore, the statute forbids the commission from adopting California's more stringent emission standards for diesel vehicles.

Recommendation

We therefore recommend that Rules I.E.5., I.E.9., I.E.11., II.A., II.D., III.A.1., III.A.2., III.B., IV., V., VI.C., VII., VIII., IX.B.1., IX.B.2, XI., and XII. of Regulation Number 20 of the rules of the Air Quality Control Commission concerning Colorado low emission automobile regulation not be extended because these rules conflict with section 42-4-403 (6)(a), C.R.S.

Addendum A

§ 7543. State standards. (a) Prohibition. No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.¹²

§ 7543. State standards. (b) Waiver. (1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part [42 USCS § 7521(a)].¹³

§ 7507. New motor vehicle emission standards in nonattainment areas. Notwithstanding section 209(a) [42 USCS § 7543(a)], any State which has plan provisions approved under this part [42 USCS §§ 7501 et seq.] may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209(a) [42 USCS § 7543(a)] respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in title II of this Act [42 USCS §§ 7521 et seq.] shall be construed as authorizing any such State to prohibit or limit, directly or

¹² 42 U.S.C. § 7543 (a).

¹³ 42 U.S.C. § 7543 (b)(1).

indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such a “third vehicle”.¹⁴

¹⁴ 42 U.S.C. § 7507.

Addendum B

25-7-105. Duties of commission - rules - legislative declaration - definitions. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article 7, including, but not limited to:

(b) Emission control regulations in conformity with section 25-7-109;

(13) (a) The commission shall promulgate rules and regulations requiring motor vehicles which have manufacturer-installed diagnostic systems for emission controls to have such diagnostic systems inspected and maintained consistent with section 202 of the federal act as part of the periodic inspection of vehicle emission control systems required pursuant to this article.

25-7-109. Commission to promulgate emission control regulations. (1) (a) Except as provided in sections 25-7-130 and 25-7-131, as promptly as possible, the commission shall adopt, promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls:

(I) For each significant source or category of significant sources of air pollutants;

(II) For each type of facility, process, or activity which produces or might produce significant emissions of air pollutants.

(3) Emission control regulations adopted pursuant to this section shall include, but shall not be limited to, regulations pertaining to the following facilities, processes, and activities:

(i) Diesel-powered machines, vehicles, engines, and equipment;

25-7-106. Commission - additional authority. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall have maximum flexibility in developing an effective air quality control program and may promulgate such combination of regulations as may be necessary or desirable to carry out that program; except that such program and regulations shall be consistent with the legislative declaration set forth in section 25-7-102. Such regulations may include, but shall not be limited to:

(c) Emission control regulations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollution is present;

42-4-403. Powers and duties of the commission. (1) The commission shall be responsible for the adoption of rules and regulations which are necessary to implement the diesel inspection program including:

(a) Regulations governing procedures for:

- (I) Testing and licensing of diesel emissions inspectors;
- (II) Licensure of diesel emission inspection stations;
- (III) Standards and specifications for the approval, operation, calibration, and certification of exhaust smoke opacity meters;
- (IV) Proper performance of diesel opacity inspections and emissions system control inspections;

(b) Issuance of the following types of certifications of emissions control by licensed diesel emission inspectors:

(I) A certification of diesel smoke opacity compliance if, at the time of inspection, the smoke opacity from a diesel vehicle is in compliance with the applicable smoke opacity limits;

(II) A certification of diesel smoke opacity waiver if, at the time of inspection, the smoke opacity from a diesel vehicle does not comply with the applicable smoke opacity limits but such vehicle is adjusted or repaired to specifications as provided by regulation of the commission;

(III) A temporary certification of diesel smoke opacity compliance for diesel vehicles required to be repaired, if such repairs are delayed due to the unavailability of needed parts. The results of the initial smoke opacity test and final test shall be given to the owner of the diesel vehicle and reported to the department of public health and environment.

(2) (a) The commission shall promulgate and from time to time revise regulations on inspection procedures and smoke opacity limits when such procedures and limits have been proven cost-effective and air pollution control-effective on the basis of best available scientific research.

(b) Smoke limits shall not require unreasonable levels of emissions performance for a properly operated and maintained diesel vehicle of a given model year and technology, and such smoke limits shall be no less than twenty percent for five seconds minimum.

(c) The commission may also develop peak smoke opacity limits, but such limits shall not be less than forty percent for less than one second.

(d) Notwithstanding any other provisions of this subsection (2), for inspections conducted between January 1, 1990, and December 31, 1990, the smoke opacity limits shall be forty percent for five seconds minimum, and no diesel vehicle shall fail the smoke opacity inspection for peak limits.

(3) (a) The commission shall annually evaluate the diesel inspection program to determine but not limit the number of diesel vehicles which fail to meet the applicable smoke opacity limits after adjustments and repairs.

(b) If the commission finds that a significant number of diesel vehicles do not meet the applicable smoke opacity limits after adjustments or repairs are made, the commission shall develop recommendations designed to improve the air pollution control-effectiveness of the diesel inspection program

in a cost-effective manner and shall submit such recommendations to the general assembly.

(4) In addition to any other authority granted under this section, the commission shall adopt regulations requiring each licensed diesel emissions inspection station to post, at the station, in a clearly legible manner and in a conspicuous place, the fee which shall be charged for performing a diesel emission-opacity inspection.

(5) The commission may exempt diesel vehicles of any make, model, or model year from the provisions of the diesel inspection program when inspection would be inappropriate for such vehicles. The exemption may include diesel vehicles which are required to be registered and inspected January, 1990.

(6) (a) Notwithstanding any other provisions to the contrary, the commission shall not have authority to adopt emission standards or implement an inspection and maintenance program that would result in emission requirements or an in-use testing or compliance demonstration that would be more stringent than the emission standards and test procedures adopted by the United States environmental protection agency for the corresponding model year and class of vehicle or engine.

(b) The commission shall determine by accepted scientific analysis that any emission standards and in-use test procedures it may adopt shall be designed so that any engine or vehicle which would pass the appropriate federal certification test shall also pass the inspection and maintenance test adopted by the commission for that engine or vehicle.

Addendum C

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

REGULATION NUMBER 20

Colorado Low Emission Automobile Regulation

5 CCR 1001-24

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Outline of Regulation

- I. GENERAL PROVISIONS
- II. APPLICABILITY
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- IV. FLEET AVERAGE EMISSIONS
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- XII. INCORPORATIONS BY REFERENCE
- XIII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE
- I. GENERAL PROVISIONS**
- I.A. All provisions of this regulation apply throughout the State of Colorado.
- I.B. This regulation applies to all 2022 and subsequent model year motor vehicles that are Passenger Cars and Light-Duty Trucks, motor vehicle engines; to all 2022 and subsequent

model year motor vehicles which are Medium-Duty Passenger Vehicles, Medium Duty Vehicles, or motor vehicle engines offered for sale or lease, or sold, or leased for registration in Colorado, and to all sales or installation of Aftermarket Catalytic Converters for any model year vehicle.

I.C. The provisions of this regulation also apply to all 2022 and subsequent model year motor vehicles sold or leased to the United States government or an agency thereof, or to the State of Colorado or any agency or political subdivision thereof that would be registered or required to be registered in the State.

I.D. This regulation is a state-only regulation and is not contained in any State Implementation Plan.

I.E. Definitions

I.E.1. *2017 through 2025 MY National Greenhouse Gas Program* means the national program that applies to new 2017 through 2025 model year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles as adopted by the U.S. Environmental Protection Agency as codified in 40 CFR Part 86, Subpart S, except as follows:

For model years 2021 through 2025, the “2017 through 2025 MY National Greenhouse Gas Program” means the national program that applies to new 2021 through 2025 model year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles as adopted by the U.S. Environmental Protection Agency as codified in 40 CFR Part 86, Subpart S, as last amended on October 25, 2016 that incorporates 40 CFR Part 86, Sections 86.1818-12 (October 25, 2016), 86.1865-12 (October 25, 2016), 86.1866-12 (October 25, 2016), 86.1867-12 (October 25, 2016), 86.1868-12 (October 25, 2016), 86.1869-12 (October 25, 2016), 86.1870-12 (October 25, 2016), and 86.1871-12 (October 25, 2016).

I.E.2. *Aftermarket Catalytic Converter* means a catalytic converter not designed and built to perform exactly as the original equipment manufacturer catalytic converter.

I.E.3. *Emissions Control System* means equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crank-case ventilating systems.

I.E.4. *Authorized Emergency Vehicle* or *Emergency Vehicle* means such vehicles of the fire department, police vehicles, ambulances, and other special-purpose vehicles as are publicly owned and operated by or for a governmental agency to protect and preserve life and property in accordance with state laws regulating Emergency Vehicles; said term also means the following if equipped and operated as Emergency Vehicles in the manner prescribed by state law:

I.E.4.a. Privately owned vehicles as are designated by the state motor vehicle licensing agency necessary to the preservation of life and property; and

I.E.4.b. Privately owned tow trucks approved by the public utilities commission to respond to vehicle emergencies.

- I.E.5. *CARB* means the California Air Resources Board as defined in California's Health and Safety Code, Section 39003.
- I.E.6. *Department* means the Colorado Department of Public Health and Environment (CDPHE).
- I.E.7. *Executive Director* means the Executive Director of the Colorado Department of Public Health and Environment.
- I.E.8. *Greenhouse Gas or GHG* means the following gases: carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons.
- I.E.9. *Light-Duty Truck* means any motor vehicle certified to the standards in California Code of Regulations, Title 13, Section 1961(a)(1) or 1961.2 rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle, rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling off-street or off-highway operation and use.
- I.E.10. *Medium-Duty Passenger Vehicle* means any medium-duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The Medium-Duty Passenger Vehicle definition does not include any vehicle which: (1) is an "incomplete truck" i.e., is a truck that does not have the primary load carrying device or container attached; or (2) has a seating capacity of more than 12 persons; or (3) is designed for more than 9 persons in seating rearward of the driver's seat; or (4) is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area, for purposes of this definition.
- I.E.11. *Medium-Duty Vehicle* means any heavy-duty low-emission, ultra-low-emission, super-ultra-low-emission or zero-emission vehicle certified to the standards in California Code of Regulations, Title 13, Section 1961.2 or 1956.8(h) having a manufacturer's gross vehicle weight rating between 8,501 and 14,000 pounds.
- I.E.12. *Military Tactical Vehicles and Equipment* means all land combat and transportation vehicles, excluding rail-based, which are designed for and are in use by any of the United States armed forces, or in use as an Authorized Emergency Vehicle by or for a governmental agency.
- I.E.13. *New Motor Vehicle* for purposes of this regulation means a 2022 model year or later motor vehicle that has accumulated less than 7500 miles of use as of the date of sale or lease.
- I.E.14. *Passenger Car* means any motor vehicle designed primarily for transportation of persons and having a design capacity of twelve persons or less.
- I.E.15. *Used Motor Vehicle* means a 2022 model year or later motor vehicle that has accumulated 7500 miles or more of use as of the date of sale or lease.

II. APPLICABILITY

- II.A. Low Emissions Vehicle Sales - It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, lease, acquire or receive a 2022 or subsequent model

year new Passenger Car, or a Light Duty Truck, Medium Duty Passenger Vehicle, or a Medium Duty Vehicle; new light- or medium-duty motor vehicle engine or motor vehicle with a New Motor Vehicle engine in the State of Colorado which is not certified to California Code of Regulations, Title 13, Sections 1961.2 ("LEV III Criteria emissions") and 1961.3 ("GHG emissions") and meets all other applicable requirements of California Code of Regulations, Title 13, Sections 1900, 1956.8(h), 1965, 1968.2, 1976, 1978, 2035, 2037 through 2041, 2046, 2062, 2109, 2111 through 2121, 2122 through 2135, 2139, 2141 through 2149, and 2222(h) and (i), unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use or sold for registration out of state. Vehicles that have been certified to standards promulgated pursuant to the authority contained in 42 U.S.C. Section 7521 (November 15, 1990) and that are in the possession of a rental agency in Colorado that are next rented with a final destination outside of Colorado will not be deemed as being in violation of this prohibition.

II.B. Exceptions - This regulation does not apply to:

II.B.1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen; or

II.B.2. A vehicle transferred by inheritance; or

II.B.3. A vehicle transferred by court decree; or

II.B.4. Any vehicle sold after the effective date of this regulation if the vehicle was registered in this State before such effective date; or

II.B.5. Any motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. Section 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State and who upon registration of the vehicle in this State provides satisfactory evidence to the Department of Revenue or its assigned designee of the previous residence and registration; or

II.B.6. A Used Motor Vehicle (7500 or more miles accumulated); or

II.B.7. Authorized Emergency Vehicles; or

II.B.8. Military Tactical Vehicles and Equipment.

II.C. Transfer to ultimate purchaser - For purposes of this regulation, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

II.D. No Conversion - In accordance with 42 U.S.C. Section 7507 under no circumstances will a Colorado action require the conversion of a vehicle to a standard different from that to which it is certified for sale in California.

- II.E. Aftermarket Catalytic Converters - applies after January 1, 2021 to all Aftermarket Catalytic Converters that are sold, offered for sale, or advertised for sale or use in Colorado on any model year vehicle.

III. CERTIFICATION TESTING

- III.A. Assembly-line quality audit emission testing and reporting shall be performed for 2022 and subsequent model years.
 - III.A.1. All manufacturers of new motor vehicles subject to this regulation produced and delivered for sale in Colorado shall conduct inspection testing in accordance with California Code of Regulations, Title 13, Section 2062.
 - III.A.2. The Department shall accept the results of quality audit testing and inspection testing determinations and findings made by CARB.
- III.B. Remedial action plans for model year 2022 and subsequent model years are required. If the State of California requires a remedial action plan based upon full calendar or partial calendar quarter testing, under the California Code of Regulations, Title 13, Section 2109, such plan will apply to all vehicles certified to the California standards intended for sale in Colorado. Such plan will not apply to vehicles that have previously been sold to ultimate purchasers in Colorado.

IV. FLEET AVERAGE EMISSIONS

- IV.A. For each model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average non-methane organic gas plus oxides of nitrogen emission values as set forth in California Code of Regulations, Title 13, Section 1961.2. Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this regulation in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.2(c).
- IV.B. For each model year, manufacturers of Passenger Cars, Light-Duty Trucks and Medium-Duty Passenger Vehicles produced and delivered for sale in Colorado shall not exceed the fleet average greenhouse gas exhaust emission levels set forth in California Code of Regulations, Title 13, Section 1961.3. For each model year, manufacturers of Medium-Duty Vehicles produced and delivered for sale or lease in Colorado shall not exceed the CO₂ emission standards set forth in California Code of Regulations, Title 13, Section 1956.8 (h)(6). Credits and debits may be accrued and utilized based upon each manufacturer's sales of vehicles subject to this Rule in Colorado, pursuant to the provisions set forth in California Code of Regulations, Title 13, Section 1961.3.

V. REPORTING REQUIREMENTS

- V.A. Certification Reporting

For the purposes of determining compliance with this regulation, the Department may require any vehicle manufacturer subject to this regulation to submit any documentation the Department deems necessary to the effective administration and enforcement of this regulation including, but not limited to all certification materials submitted to CARB.

- V.B. Fleet average reporting

Commencing with the 2022 model-year, each manufacturer must report to the Department using the same format used to report this information to CARB, the fleet average non-methane organic gas plus oxides of nitrogen pollutant and greenhouse gas emissions of its fleet delivered for sale in Colorado. If the "*Pooling Provision*" option number two in the California Code of Regulations, Title 13, Section 1961.2 is chosen, or the "*Calculation of Fleet Average Carbon Dioxide Value*" option number two in California Code of Regulations, Title 13, Section 1961.3 (5)(D) is chosen, manufacturers must report the data for the entire pool as well as the Colorado specific portion. Non-methane organic gas plus oxides of nitrogen reports must be submitted to the Department by no later than March 1 of the calendar year succeeding the end of the model year. Carbon dioxide reports must be submitted to the Department by no later than May 1 of the calendar year succeeding the end of the model year.

V.C. Assembly line testing reporting

Upon request by the Department, commencing with the 2022 model year, vehicle manufacturers are required to provide reports on all assembly-line emission testing and functional test results collected as a result of compliance with this regulation and California Code of Regulations, Title 13, Section 2062. Reports must be provided to the Department or to the Department's designee.

V.D. Warranty Reporting

Upon request by the Department, commencing with the 2022 model year, each manufacturer shall submit warranty claim reports submitted to CARB to the Department as required by California Code of Regulations, Title 13, Sections 2141 through 2149.

V.E. Recall Reporting

Upon request by the Department, commencing with the 2022 model year, each manufacturer shall submit recall plans and progress reports submitted to CARB to the Department, using the same format and information as required by California Code of Regulations, Title 13, Sections 2119 and 2133.

VI. SURVEILLANCE AND ENFORCEMENT

VI.A. Surveillance of motor vehicle dealers.

VI.A.1. For the purpose of enforcing or administering any Federal or State law, order, regulation, or rule relating to vehicular sources of emissions, the Department or an authorized representative of the Department of Revenue, has the right of entry for the purpose of inspecting any 2022 and subsequent model year vehicles to any premises owned, operated, used, leased, or rented by any new or used car dealer.

VI.A.2. Nothing in Section VI. or elsewhere in this regulation is intended to limit the Department's authority to enter and inspect pursuant to 25-7-111, C.R.S, effective June 3, 2009.

VI.B. Enforcement

VI.B.1. For the purpose of developing the provisions of this regulation, any person subject to the provisions of this regulation must, upon oral or written request of any authorized officer or employee or designee of the Department, when properly identified and duly designated, furnish or permit such officer or employee or designee at all reasonable times to have access to, and to copy all records relating to those vehicles which are subject to this regulation.

VI.B.2. Unless otherwise specified, any person subject to the provisions of this regulation must retain all relevant records for at least three years from the creation of those records. Such records will be provided to the Department upon its request.

VI.C. Fleet average enforcement

VI.C.1. If the report issued by a manufacturer under Section V.B. of this regulation demonstrates noncompliance with the fleet average contained in this regulation during a model year, the manufacturer must within 60 days file a fleet average enforcement report with the Department documenting such noncompliance. Fleet average enforcement reports must identify all vehicle models delivered for sale or lease in Colorado and their corresponding certification standards and the percentage of each model delivered for sale in Colorado and California in relation to total fleet sales in the respective state.

VII. EMISSION CONTROL SYSTEM WARRANTY AND RECALL REQUIREMENTS

VII.A. Emissions control system warranty requirements - For all 2022 and subsequent model year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and motor vehicle engines subject to this regulation, each manufacturer shall provide defect warranty coverage. For vehicles registered or principally operated in the Front Range AIR Program area, performance warranty coverage that complies with California Code of Regulations, Title 13, Sections 2035, 2037 through 2041, and 2046 shall apply.

VII.B. Recalls - For all 2022 and subsequent model year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and motor vehicle engines subject to recall in California, each manufacturer shall undertake recall campaigns in Colorado pursuant to California Code of Regulations, Title 13, Sections 2111 through 2121 and 2122 through 2135, unless the manufacturer demonstrates to the Department that such recall is not applicable to vehicles registered in Colorado.

VIII. ENVIRONMENTAL PERFORMANCE LABELS

VIII.A. It is unlawful for any person to sell or register, offer for sale or lease, import, deliver, purchase, rent, lease, acquire, or receive a 2022 and subsequent model year new Passenger Car, Light-Duty Truck, Medium-Duty Passenger Vehicle, or Medium-Duty Vehicle in Colorado to which emissions control labels and environmental performance labels have not been affixed pursuant to the requirements of California Code of Regulations, Title 13, Section 1965.

IX. AFTERMARKET CATALYTIC CONVERTERS

IX.A. Applicability - This regulation applies to all Aftermarket Catalytic Converters that are sold, offered for sale, or advertised for sale or use in Colorado on any model year vehicle.

IX.B. Prohibition

IX.B.1. It is unlawful for any person to install, sell, offer for sale, or advertise any Aftermarket Catalytic Converter intended for use on any motor vehicle originally equipped with catalytic converter(s) in Colorado unless it has been exempted pursuant to the requirements of California Code of Regulations, Title 13, Section 2222 (h) (i.e. a "California Aftermarket Catalytic Converter").

IX.B.2. It is unlawful for any person to install, sell, offer for sale, or advertise any used, recycled, or salvaged catalytic converter in Colorado pursuant to the requirements of California Code of Regulations, Title 13, Section 2222 (h), (i), and (k).

IX.B.3. This Aftermarket Catalytic Converter policy shall go into effect January 1, 2021

X. SEVERABILITY

Each provision of this regulation shall be deemed severable, and in the event that any provision of this regulation is held to be invalid, the remainder of this regulation shall continue in full force and effect.

XI. OPTIONAL COMPLIANCE WITH THE 2017 THROUGH 2025 MODEL YEAR NATIONAL GREENHOUSE GAS PROGRAM

For the 2017 through 2025 model years, a manufacturer may elect to demonstrate compliance with Regulation Number 20 and California Code of Regulations, Title 13, Section 1961.3 by demonstrating compliance with the 2017 through 2025 MY National Greenhouse Gas Program as follows:

- XI.A. A manufacturer that selects compliance with this option must notify the Department of that selection, in writing, prior to the start of the applicable model year or must comply with California Code of Regulations, Title 13, Sections 1961.3 (a) and (b);
- XI.B. The manufacturer must submit to the Department all data that it submits to EPA in accordance with the reporting requirements as required under 40 CFR Section 86.1865-12, incorporated by reference in and amended by the “California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles,” for demonstrating compliance with the 2017 through 2025 MY National Greenhouse Gas Program and the EPA determination of compliance. All such data must be submitted within 30 days of receipt of the EPA determination of compliance for each model year that a manufacturer selects compliance with this option;
- XI.C. The manufacturer must provide to the Department separate values for the number of vehicles in each model type and footprint value produced and delivered for sale in Colorado, California, the District of Columbia, and each individual state that has adopted California’s greenhouse gas emission standards for that model year pursuant to Section 177 of the federal Clean Air Act (42 U.S.C. Section 7507), the applicable fleet average CO₂ standards for each of these model types and footprint values, the calculated fleet average CO₂ value for each of these model types and footprint values, and all values used in calculating the fleet average CO₂ values.
- XI.D. The optional compliance approach provided by this Section XI. and California Code of Regulations, Title 13, Section 1961.3(c) shall not be available for 2021 through 2025 model year Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles if the “2017 through 2025 MY National Greenhouse Gas Program” is altered via a final rule published in the *Federal Register* subsequent to October 25, 2016.

XII. INCORPORATIONS BY REFERENCE

This Regulation Number 20 incorporates by Reference the following California Code of Regulations, Title 13, Sections 1961.2 and 1961.3, 1900, 1956.8(h), 1965, 1968.2, 1976, 1978, 2035, 2037 through 2041, 2046, 2062, 2109, 2111 through 2121, 2122 through 2135, 2139, 2141 through

2149, and 2222(h) and (i), identified in the following table. All references to the California Code of Regulations in this Regulation Number 20 mean the versions specified in the table.

For the purposes of applying the incorporated sections of the California Code of Regulations, unless the context requires otherwise, “California” means “Colorado”. Depending on context, “CARB” or “AIR Resources Board” means Colorado Department of Public Health and Environment, and “Executive Officer” means the Executive Director of the Colorado Department of Public Health and Environment.

Code of California Regulations, Title 13. Motor Vehicle, Division 3. Air Resource Board

Section	Title	Section Amended Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1. General Provisions		
1900	Definitions	<i>July 25, 2016</i>
Article 2. Approval of Motor Vehicle Pollution Control Devices (New Vehicles)		
1956.8	Exhaust Emissions Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles – (Medium Duty Vehicle GHG standards only)	<i>October 16, 2017</i>
1961.2	Exhaust Emission Standards and Test Procedures – 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<i>September 28, 2018</i>
1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	<i>September 28, 2018</i>
1965	Emission Control and Smog Index Labels – 1979 and Subsequent Model Year Vehicles	<i>October 8, 2015</i>

1968.2	Malfunction and Diagnostic System Requirements – 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	<i>July 25, 2016</i>
1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	<i>October 8, 2015</i>
1978	Standards and Test Procedures for Vehicle Refueling Emissions	<i>October 8, 2015</i>
Article 6. Emission Control System Warranty		
2035	Purpose, Applicability and Definitions	<i>November 9, 2007</i>
2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>December 5, 2014</i>
2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	<i>August 7, 2012</i>
2039	Emission Control System Warranty Statement	<i>December 26, 1990</i>
2040	Vehicle Owner Obligations	<i>December 26, 1990</i>
2041	Mediation; Finding of Warrantable Condition	<i>December 26, 1990</i>
2046	Defective Catalyst	<i>February 15, 1979</i>
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 1. Assembly-Line Testing		

2062	Assembly-line Test Procedures 1998 and Subsequent Model years	<i>August 7, 2012</i>
Article 2. Enforcement of New and In-use Vehicle Standards		
2109	New Vehicle Recall Provisions	<i>December 30, 1983</i>
Article 2.1. Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
2111	Applicability	<i>December 8, 2010</i>
2112	Definitions	<i>December 5, 2014</i>
2113	Initiation and Approval of Voluntary and Influenced Emission-Related Recalls	<i>January 26, 1995</i>
2114	Voluntary and Influenced Recall Plans	<i>November 27, 1999</i>
2115	Eligibility for Repair	<i>January 26, 1995</i>
2116	Repair Label	<i>January 26, 1995</i>
2117	Proof of Correction Certificate	<i>January 26, 1995</i>
2118	Notification	<i>January 26, 1995</i>
2119	Recordkeeping and Reporting Requirements	<i>November 27, 1999</i>
2120	Other Requirements Not Waived	<i>January 26, 1995</i>
2121	Penalties	<i>January 26, 1995</i>
Article 2.2. Procedures for In-Use Vehicle Ordered Recalls		
2122	General Provisions	<i>December 8, 2010</i>

2123	Initiation and Notification of Ordered Emission-Related Recalls	<i>January 26, 1995</i>
2124	Availability of Public Hearing	<i>January 26, 1995</i>
2125	Ordered Recall Plan	<i>January 26, 1995</i>
2126	Approval and Implementation of Recall Plan	<i>January 26, 1995</i>
2127	Notification of Owners	<i>January 26, 1995</i>
2128	Repair Label	<i>January 26, 1995</i>
2129	Proof of Correction Certificate	<i>January 26, 1995</i>
2130	Capture Rates and Alternative Measures	<i>November 27, 1999</i>
2131	Preliminary Tests	<i>January 26, 1995</i>
2132	Communication with Repair Personnel	<i>January 26, 1995</i>
2133	Recordkeeping and Reporting Requirements	<i>January 26, 1995</i>
2134	Penalties	<i>January 26, 1995</i>
2135	Extension of Time	<i>January 26, 1995</i>
Article 2.3. In-Use Vehicle Enforcement Test Procedures		
2139	Testing	<i>December 5, 2014</i>
Article 2.4. Procedures for Reporting Failure of Emission-Related Components		
2141	General Provisions	<i>December 8, 2010</i>
2142	Alternative Procedures	<i>February 23, 1990</i>

2143	Failure Levels Triggering Recall	<i>November 27, 1999</i>
2144	Emission Warranty Information Report	<i>November 27, 1999</i>
2145	Field Information Report	<i>August 7, 2012</i>
2146	Emissions Information Report	<i>November 27, 1999</i>
2147	Demonstration of Compliance with Emission Standards	<i>December 5, 2014</i>
2148	Evaluation of Need for Recall	<i>November 27, 1999</i>
2149	Notification of Subsequent Action	<i>February 23, 1990</i>
Chapter 4. Criteria for the Evaluation of Motor Vehicle Pollution Control Devices and Fuel Additives		
Article 2. Aftermarket Parts		
2222 (h) and (i)	Add-On Parts and Modified Parts	<i>April 17, 2017</i>

Regulation Number 20 does not include any later amendments or editions of the regulations incorporated by reference. The incorporated regulations are available for inspection at the Division during normal business hours at:

Colorado Department of Public Health and Environment
Air Pollution Control Division, Mobile Sources Section
4300 Cherry Creek Drive South, Denver, CO, 80220

Or online at:

<https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I88D700E0D46911DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=%28sc.Default%29>

Copies of the above incorporated regulations are also available for a reasonable charge from the Department and from:

Barclays Official California Code of Regulations
50 California Street Second Floor
San Francisco, CA 94111

XII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

XII.A. November 15, 2018 (Adoption of all Sections)

This Statement of Basis, Specific Statutory Authority, and Purpose complies with the requirements of the Colorado Administrative Procedure Act, Section 24-4-103(4), C.R.S., the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S. and the Air Quality Control Commission's ("Commission") Procedural Rules.

Basis

On June 18, 2018, Governor John Hickenlooper, by Executive Order B 2018 006, directed the Colorado Department of Public Health and Environment to develop and propose a regulation for the implementation of a Colorado low emission vehicle ("LEV") program, incorporating the requirements of the California LEV program. The Executive Order declared the need for adopting the LEV program as a response to the federal governments announced intention to roll back vehicle greenhouse gas ("GHG") standards for model years 2022 and beyond. Currently, the federal and California vehicle standards establish essentially the same emission limits. Colorado's adoption of the California vehicle standards for light- and medium-duty vehicles is intended to maintain the standards already in place for these vehicle in Colorado.

However, the Commission notes that it spent considerable time gathering input from the auto industry, environmental groups, local governments, and the Division regarding the potential implications of this rule prior to the issuance of the Executive Order. The Commission's decision to embark upon this rulemaking hearing was deliberate and well considered, and all interested parties and members of the public had significant opportunity to provide input to the Commission in its consideration of whether to adopt this regulation.

The Commission determines adoption of Regulation Number 20, Colorado Low Emission Automobile Regulation Number ("CLEAR") will reduce vehicle GHG emissions in Colorado by retaining vehicle standards demonstrated through comprehensive analyses as being economically reasonable, technologically feasible and to provide the co-benefit of reducing costs for Colorado drivers.

Statutory Authority

Section 177 of the federal Clean Air Act ("CAA"), 42 U.S.C. Section 7507, provides states the option of requiring compliance with either federal or approved California standards for vehicles sold within their borders. The Colorado Air Pollution Prevention and Control Act, Sections 25-7-101, C.R.S., et seq., ("Act") at Section 25-7-105(1), directs the Commission to promulgate emission control regulations consistent with the legislative declaration set forth in Section 25-7-102 and in conformity with Section 25-7-109. The legislative declaration identifies, among other objectives, the need to "achieve the maximum practical degree of air purity in every portion of the State" Section 25-7-102, C.R.S. Sections 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources, and emission control regulations pertaining to carbon oxides. Section 25-7-106 further provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. Section 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution.

While there were arguments made as part of the proceeding that vehicle emission control studies and a resulting recommendation from the Commission are prerequisites to the adoption of Regulation Number 20 pursuant to Section 25-7-130, the Commission disagrees, based on both the plain language and the legislative history of the statute. Section 25-7-130 pertains to inspection and maintenance programs for in-use vehicles, and this regulation is solely applicable to new vehicles. In addition, while Section 25-7-130 requires the Division to conduct studies and pilot programs and the Commission to create recommendations based upon the results of those efforts, nothing in the statute directly requires those studies, programs, and recommendations to be performed and developed before the Commission can propose and adopt a rule.

Purpose

The following section sets forth the Commission's purpose in adopting Regulation Number 20, and includes the technological and scientific rationale for the adoption of the regulation. The Commission determines adoption of Regulation Number 20 CLEAR will reduce vehicle emissions in Colorado. The Commission is utilizing the option that CAA Section 177 provides states to choose between the federal and approved California vehicle standards. Nothing in CLEAR is intended to differ in any substantive way from the provisions adopted by California as of the effective date of these revisions adopted by the Commission. The Commission determines adopting the California standards will retain the vehicle standards currently in place in Colorado and avoid the disbenefits of the anticipated roll back of federal standards.

In accordance with C.R.S. Sections 25-7-105.1 and 25-7-133(3) the Commission states the rules in Regulation Number 20 adopted in this rulemaking are state-only requirements and are not intended as additions or revisions to Colorado's State Implementation Plan (SIP).

As part of adopting the revisions to Regulation Number 20, the Commission has taken into consideration each of the factors set forth in C.R.S. Section 25-7-109(1)(b). The Commission considered information in the record regarding the state policy regarding air pollution ("...to achieve the maximum practical degree of air purity in every portion of the state, to attain and maintain the national ambient air quality standards..."), federal recommendations and requirements, the degree to which altitude, topography, climate, or meteorology requires different more or less stringent regulations in different parts of the state, the degree to which these types of emissions are subject to treatment and the availability and feasibility of treatment, the significance of the emissions to be controlled, the continuous nature of the emissions to be controlled, the economic, environmental, and energy costs of complying with the rule, and whether the rule should be statewide or apply only to portion of the state.

The Division provided an economic impact analysis for this rule, as well as a cost-benefit analysis pursuant to Section 24-4-103(2.5), C.R.S. and a regulatory analysis pursuant to Section 24-4-103(4.5), C.R.S. The Division made a good faith effort to provide the most complete and accurate analyses based on the information reasonably available to it. Expert testimony presented to the commission raises serious questions about cost estimates from the August 2018 SAFE Rule proposal (83 FR 48578). The commission did not rely on these estimates. Nevertheless, the division's cost benefit analysis, revised final economic impact analysis, and regulatory analysis and other evidence in the record amply support the conclusion that Regulation Number 20 is a practical measure that will cost effectively reduce GHG emissions.

To the extent that C.R.S. Section 25-7-110.5(5)(b) requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

- (I) *Any federal requirements that are applicable to this situation with a commentary on those requirements;*

Section 177 of the Federal Clean Air Act permits states the option of adopting California car standards. Twelve other states and the District of Columbia made this adoption of California standards in the past 14 years.

Auto manufacturers typically build two models of a particular car – one for sale in California, and another to sell elsewhere. California cars have been historically slightly lower-emitting than their federally certified counterparts. However, the standards for both were harmonized in 2017. The U.S. Environmental Protection Agency (“US EPA”) is taking action to roll back a standards change proposed for the 2021 model year. California cars would retain the standards-change that further reduces GHG emissions. California’s rules previously allowed for manufacturers to comply with California’s program by complying with the equivalent federal standards; however, California recently revised its rules to disallow compliance with federal standards to satisfy compliance with California standards in the event of a roll back.

- (II) *Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not;*

The federal Clean Air Act grants authority to US EPA to establish new vehicle emissions standards. California mandated its own emissions standards, predating the federal Act. Car manufacturers have been engineering to federal or California emissions standards for 50 years, with tremendous technological innovation during that time. These are performance-based emissions standards – vehicles may not emit more than x grams per mile of the various criteria and GHG emissions for either certification.

- (III) *Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements;*

The Executive Order requires the Commission to consider adopting California Low Emission Vehicle standards. Because the ozone-forming criteria emissions standards are essentially the same between California and federal cars, there is little ozone benefit for Colorado in this rule. The emission reduction benefit to be derived from this regulation is primarily for GHG reductions. GHG are contributing to climate change, which is a concern to many Coloradans. The extent to which Colorado’s concerns and issues will be specifically addressed in the federal proposal is unclear.

- (IV) *Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later;*

The regulatory burden of the proposed rule falls on auto manufacturers and dealers. The proposed rule does not significantly improve nor inhibit manufacturer’s and Dealers’ ability to comply, since these cars are being built for consumers in 13 states and the District of Columbia already.

- (V) *Whether there is a timing issue which might justify changing the time frame for implementation of federal requirement;*

The federal administration formally proposed rollback options for the 2021 GHG standards on August 2, 2018. This proposed federal rule also considers revoking California’s waiver to set their own standards. The federal Clean Air Act, Section 177 allows a state to adopt

California new car emissions standards in lieu of federal standards. There is a mandated two-model-year lead time when a state makes the Section 177 adoption to California standards. Those standards are due to lapse after the 2025 model year. So In order for Colorado to maximize the benefits from this new rule, it should be adopted before January 1, 2019.

- (VI) *Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth;*

The proposed rule will reduce GHG emissions in support of Colorado's Climate Action Plan and Executive Order D 2017-015. As the Colorado vehicle fleet turns over and newer, lower-emitting vehicles are brought into use, overall emissions are reduced.

- (VII) *Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources;*

The proposed rule affects a single source category, mobile sources. Therefore there are no equity issues between these sources. However, if the federal vehicle standards are rolled back and this proposed rule is not adopted, additional GHG emissions reductions will be required from other emission source categories to make up for the loss of approximately 30 million tons of benefit in GHG reduction projected to be achieved through this rule, in order to meet the Governor's Executive Order D2017-015.

- (VIII) *Whether others would face increased costs if a more stringent rule is not enacted;*

As a contributor to climate change, GHG emissions present a cost to Coloradoans and Colorado businesses. In order to meet the goals of the Climate Action Plan, GHG emissions reductions not gained from the Mobile source sector may need to be taken from other industries.

- (IX) *Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements;*

Although California-certified Low Emission Vehicles will be built to different standards than their federally-certified counterparts, the processes and procedures are very similar. There will be some additional monitoring, averaging, and reporting requirements, although vehicle manufacturers and dealers are already meeting those requirements in 13 other states and the District of Columbia.

There will be additional workload on state and county staff, performing surveillance and enforcement, new vehicle titling and registration requirements, and monitoring vehicles sales.

- (X) *Whether demonstrated technology is available to comply with the proposed requirement;*

Both US EPA and the California Air Resources Board have found that the standards in the proposed rule are appropriate based on existing and maturing technologies. EPA has reversed themselves stating in April 2018 that the 2021 GHG standards change is inappropriate.

- (XI) *Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain; and*

The proposed rule is estimated to reduce GHG emissions by approximately 30 million tons over the lifetime of vehicles built for model years 2022 through 2031. A co-benefit to reducing GHG emissions is a savings to Colorado motorists, resulting in a savings over the life of a LEV vehicle that more than offsets the increase in purchase price of the vehicle.

- (XII) *Whether an alternative rule, including a no-action alternative, would address the required standard.*

Other than retaining the federal standards, there is no regulatory alternative to adopting California LEV standards for Colorado. Assuming the proposed rollback of the federal standards occurs, no action would result in a significant increase in vehicle GHG emissions in Colorado.

To the extent that C.R.S. Section 25-7-110.8 requirements apply to this rulemaking, and after considering all the information in the record, the Commission hereby makes the determination that:

- (I) These rules are based upon reasonably available, validated, reviewed, and sound scientific methodologies, and the Commission has considered all information submitted by interested parties.
- (II) Evidence in the record supports the finding that the rules result in a demonstrable reduction of emissions.
- (III) Evidence in the record supports the finding that the rules bring about reductions in risks to human health and the environment that justify the costs to implement and comply with the rules.
- (IV) The rules are the most cost-effective to achieve the necessary and desired results, provide the regulated community flexibility, and achieve the necessary reduction in air pollution.
- (V) The selected regulatory alternative will maximize the air quality benefits of regulation in the most cost-effective manner.

